IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1820 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANBHAI SOMABHAI THAKORE & 1 - Appellant(s)
Versus
MITESHBHAI MOHANBHAI MISTRY & 1 - Defendant(s)

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Appearance :
MR HM PARIKH for Appellant(s) : 1 - 2.
DS AFF.NOT FILED (N) for Defendant(s) : 1,
MR HEMANT S SHAH for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/12/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

The appeal is admitted. Mr. Hemant Shah, learned advocate appearing for the New India Assurance Co. Ltd. waives service of notice of admission of the appeal. Original opponent no.1(driver of the vehicle) was already deleted before the Tribunal. Respondent no.1 herein(owner of the vehicle) is not required to be heard as the insurance company has been held liable to pay the compensation.

2. Dispute in this appeal is only regarding the quantum of compensation as the original claimants are dissatisfied with the compensation awarded by the Tribunal at Rs. 96,400/- as against their claim of Rs.1,50,000/- with interest from the date of claim petition.

3. The broad facts of the case are not in dispute. On 29th April, 1992, Sangita-daughter of the appellants herein, aged five years died in a motor vehicle accident as she was knocked down by a truck insured by respondent no.2 insurance company. Since the deceased was only five years old on the date of accident, she was obviously not earning and, therefore, Mr. Parikh for the appellant has submitted that as per the decision of the Apex Court, even where an accident has taken place prior to 1994, the amounts indicated in the Second Schedule to the Motor Vehicle

Act,1988 can be taken as safe guidelines for determining the amount of compensation. It is therefore, submitted that the Tribunal ought to have awarded compensation of Rs. 1,50,000/-. Mr. Parikh submits that in fact as per the recent judgement of this Court, the amount would be much more than Rs.1,50,000/-, but he is confining the claim in the appeal to Rs. 1,50,000/- i.e. for additional amount of Rs. 53,600/- with interest thereon from the date of claim petition.

4. On the other hand, Mr. Hemant Shah for respondent no.2-insurance company has supported the judgement of the Tribunal.

5. Having heard the learned advocates for the parties and having regard to the recent judgement dated 8th November, 2006 passed in First Appeal No.3009/2006, we are of the view that the amount of compensation is required to be raised from Rs.96,400/- to Rs. 1,50,000/-.

6. The appeal is accordingly partly allowed. The amount of compensation is raised from Rs.96,400/- to Rs.1,50,000/-. The additional amount of Rs. 53,600/- shall be deposited by respondent no.2 insurance company before the Tribunal. with interest at the rate of 9% per annum from the date of claim petition till realisation.

7. The additional amount shall also be invested/disbursed in accordance with the ratio indicated in the judgement of the Tribunal.

8. The appeal is accordingly allowed and judgement of the Tribunal shall stand modified to the above extent.

(M.S.Shah,J.)

(Akil Kureshi, J.)

(raghu)